

### REMARKS

Claims 1-12, 30, and 53-62 are pending in this application. Claims 58, 61, and 62 stand withdrawn as being directed to a non-elected invention. Claims 2-7 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Claims 1-12, 30, 53-57, 59 and 60 are rejected for obviousness-type double patenting over claims 1-15 of U.S. Patent No. 6,660,487 or claims 1-18 of U.S. Patent No. 6,599,710. By this reply, Applicant cancels claims 61-62, amends claims 2-4 and 7, requests rejoinder of claim 58, and addresses each of the rejections.

#### Support for the Amendment

Support for the amendment of claims 2-4 and 7 is found, e.g., in original claim 46 of the specification as filed. No new matter is added by the amendment.

#### Rejection under 35 U.S.C. § 112, second paragraph

Present claims 2-7 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 2-4 and 7 are amended to recite “pancreas” rather than “organ or tissue” so that the antecedent basis provided by claim 1, from which the amended claims ultimately depend, is properly preserved.

Applicant respectfully requests that the rejection of present claims 2-7 under 35 U.S.C. § 112, second paragraph be withdrawn.

#### Obviousness-Type Double-Patenting Rejection

Present claims 1-12, 30, 53-57, 59 and 60 stand rejected for obviousness-type double patenting over claims 1-15 of U.S. Patent No. 6,660,487 (hereafter “the ‘487 patent”) or claims 1-18 of U.S. Patent No. 6,599,710 (hereafter “the ‘710 patent”). This rejection is in error and should be withdrawn. Claims 1-15 of the ‘487 patent have been surrendered in an ongoing re-issue proceeding. A copy of the reissue oath is provided with this response for the Examiner’s convenient review. Moreover, as previously stated by the Applicant in the July 28, 2008 Response to Office Action, the claims of the ‘487 and ‘710 patents do not teach or suggest a

method of treating a human involving the administration to a human of "a composition enriched in pluripotent cells that express the Hox11 gene." However, to expedite prosecution of the instantly claimed subject matter, a terminal disclaimer with respect to the '710 patent accompanies this Response. Accordingly, the obviousness-type double patenting rejection should be withdrawn.

#### Rejoinder

Claims 58, 61, and 62 are withdrawn from consideration. Claims 61 and 62 are canceled by entry of this amendment. In response to the Restriction Requirement mailed on August 28, 2006, the Applicant was required to elect a single embodiment selected from the group of species presented in claim 5 in connection with a method for increasing or maintaining the number of functional cells using a specific TNF-alpha agonist or TNF-alpha inducing substance, and one specific disease recited in one of claims 59-62. The Applicant elected TNF-alpha receptor II agonist and diabetes for prosecution on the merits.

Claim 1, if allowed following entry of this amendment, is generic. As is provided by 37 C.F.R. § 1.141, Applicant is entitled to consideration of the additional species recited in withdrawn claim 58. Thus, upon allowance of claim 1, Applicant respectfully requests that the species election be withdrawn and claim 58 be rejoined with the pending claims and allowed.

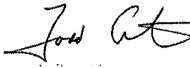
CONCLUSION

Applicant submits that present claims 1-12, 30, 53-60 are in condition for allowance, and such action is respectfully requested.

Because the Office was closed on December 26, 2008, Applicant believes that this reply, which is being filed on the next business day, is timely filed and that no extension fee is due.

If there are any other charges or any credits, please apply them to Deposit Account No. 03-2095.

Respectfully submitted,



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